

## Chapter 6

# Post-contractual requirements

6

6.1

Keeping the customer and others informed

Application

6.1.1

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This section applies to a *firm* in relation to it carrying on *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*.

Enquiries regarding outstanding liabilities

6.1.2

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(1) After a *firm* has entered into an agreement with a *customer* relating to *regulated claims management activity*, the *firm* must promptly ask the *person* against whom the *claim* is to be made whether the *customer* has any outstanding liabilities with that *person*, which the damages, compensation or settlement monies might be off-set against.

(2) If the *person* against whom the *claim* is to be made confirms that the *customer* has such liabilities with it, the *firm* must:

(a) in a *durable medium*, promptly inform the *customer* of this;

(b) inform the *customer* that they will, where necessary, need to pay the *firm's* fees from their own funds.

6.1.3

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(1) The guidance at ■ CMC OB 4.2.10G also applies in relation to ■ CMC OB 6.1.2R.

(2) A *firm* should comply with ■ CMC OB 6.1.2R(1) at the first opportunity it has, for example at the time of sending a letter of authority or initial information request to the *person* against whom the *claim* is to be made.

Passing on information and requests for information

6.1.4

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(1) The *firm* must pass on to the *customer*:

(a) any information received from a third party which is addressed to, or meant for, the attention of that *customer*; and

(b) any request received by the *firm* from a third party for the supply of information by the *customer* that the *firm* does not already hold.

(2) The *firm* must pass on the information or request:

## 6.1.5

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- (a) promptly, and in any event within ten *business days* of receiving the information or request; and
  - (b) in a *durable medium*.
- (1) A *firm* must notify the *customer* of:
- (a) the *firm* becoming aware of:
    - (i) any costs that the *customer* may have to meet which the *firm* has not previously notified to the *customer*; or
    - (ii) where the *firm* has notified the *customer* of the amount of any costs, any change to those costs (including any changes to the *firm's* fees); and
  - (b) any material development in the progress of the *customer's claim*; and
  - (c) if the *firm* becomes aware that the *person* against whom the *claim* is being or to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in ■ CMCOB 4.2.2R(2)(g)), the fact that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme; and
  - (d) any actions the *firm* intends to take to present and pursue the *claim* that were not notified to the *customer* under ■ CMCOB 4.2.8R (1)(c) at the time of contracting; and
  - (e) any allegation by a third party that the *claim* is fraudulent, except where there is a legal obligation preventing such disclosure. Where a *firm* is required to make such a notification under this provision, the *firm* must also advise its customer of the consequences of pursuing a fraudulent *claim*. *Firms* are reminded of their obligations under ■ CMCOB 2.1.7R(2).
- (2) The *firm* must make a notification in (1):
- (a) promptly, and in any event within ten *business days* of an event listed in (1) occurring; and
  - (b) in a *durable medium*, except for (1)(d), which may alternatively be made over the telephone.
- (3) Where a *firm* notifies the *customer* of any costs or changes to costs in accordance with (1)(a), the *firm* must obtain and record the *customer's* consent in relation to those costs before it invoices the *customer* for them.
- (4) The *firm* must obtain consent for any actions it proposes to take that:
- (a) have not previously been notified to the *customer*; or
  - (b) were notified to the *customer* more than six *months* ago and are significant in nature.
- (5) For the purposes of (4)(b), examples of actions that are significant in nature include, but are not limited to, the *firm* proposing to:
- (a) commence legal proceedings; or
  - (b) submit a *claim* to a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.

		<div>(6) A <i>firm</i> must obtain the <i>customer's</i> consent in (3) and (4):<div>(a) over the telephone; or</div><div>(b) in a <i>durable medium</i>.</div></div>
6.1.6	G	<div>(1) Examples of developments in the progress of the <i>claim</i> which should be treated as material for the purposes of ■CMCOB 6.1.5R(1)(b) include:<div>(a) the <i>firm</i> becoming aware of the timetable for any court proceedings or alternative dispute resolution schemes (such as the <i>Financial Ombudsman Scheme</i>), or of any changes to that timetable;</div><div>(b) the <i>firm</i> receiving any information relating to the <i>claim</i> which is likely to have an effect on the amount of time within which the <i>firm</i> expects the <i>claim</i> to be determined;</div><div>(c) the <i>firm</i> becoming aware of any information relating to the <i>claim</i> which is likely to have an effect on the prospects of the <i>claim</i> succeeding;</div><div>(d) the <i>firm</i> receiving an offer of any kind from the <i>person</i> against whom the <i>claim</i> is being made to settle the claim, whether for money or some other non-monetary benefit, even where such an offer was not originally the intended outcome of the <i>claim</i>; and</div><div>(e) the <i>firm</i> receiving a decision in respect of the <i>claim</i> from a statutory ombudsman, a statutory compensation, or alternative dispute resolution scheme.</div></div> <div>(2) When making a notification in accordance with ■CMCOB 6.1.5R (1)(b), a <i>firm</i> should consider whether it is necessary to inform the <i>customer</i> that:<div>(a) updates from the <i>firm</i> are likely to be less frequent while the progress of the claim is not within the <i>firm's</i> control; and</div><div>(b) the <i>customer</i> may contact the <i>firm</i> at any time to discuss their <i>claim</i> and its progress.</div></div>
6.1.7	R	<div>Revised fee estimates</div> <div>When the <i>firm</i> has sufficient information from which it may reasonably estimate what its fee will be, or that the fee payable by the <i>customer</i> will differ from the illustration or estimate provided under ■CMCOB 4.2.5R or a previous estimate provided under this <i>rule</i>, the <i>firm</i> must promptly provide the <i>customer</i>, in a <i>durable medium</i>, with:<div>(1) an estimate of the fee; and</div><div>(2) an explanation of why that estimate differs from the illustration or the estimate (if any) which the <i>firm</i> has most recently provided.</div></div>
6.1.8	G	<div>(1) ■CMCOB 6.1.7R requires a <i>firm</i> to give a <i>customer</i> updated fee estimates. For example, a <i>firm</i> is likely to have sufficient information to produce a revised estimate once:</div>

- (a) it knows how much compensation the *customer* is claiming in relation to a misold financial product (for example because it has obtained the relevant *credit agreement*) where the fee is a percentage of that sum; or
  - (b) it realises that its fee, if charged by reference to an hourly rate, is likely to differ from its original estimate.
- (2) When calculating the likely compensation, damages or redress to provide the revised fee estimate under ■ CMCOB 6.1.7R, a *firm* should include in their calculation any interest or other sum likely to be paid in satisfaction of the *claim* on which the *firm's* fees will be based.
- (3) If the *firm* realises that a revised estimate is incorrect, it should provide a further revised estimate.
- (4) When giving a revised fee estimate as required by ■ CMCOB 6.1.7R the *firm*:
  - (a) should, where relevant, communicate to the *customer* any assumptions it has used in its calculations, for example that the *customer* made all of the payments they were obliged to make under the agreement; and
  - (b) may, where appropriate, include a statement to the effect that the fee estimate may be subject to change and may be different to the actual amount the *customer* will receive.
- (5) For *claims* concerning pension or *investment* products or services, *firms* are expected to:
  - take all reasonable steps to obtain sufficient information about the *claim* as soon as reasonably practicable after entering into an agreement with the *customer* to provide *regulated claims management activity*, enabling them to comply with ■ CMCOB 6.1.7R promptly; and
  - where such information is unavailable, consider whether, based on experience of similar claims, the *firm* is in any case able to give the *customer* a more reliable indication of the fee that the *customer* is likely to pay.

### Keeping the customer informed

#### 6.1.9



- (1) A *firm* must provide each *customer* with an update on the progress of the *claim* at least once every six *months*, in a *durable medium*.
- (2) But the *firm* need not provide an update under (1) if, in the previous six *months*, the *firm* has:
  - (a) as part of a notification required under ■ CMCOB 6.1.5R(1), given an update on the progress of the claim; and
  - (b) the notification contains sufficient information as to constitute an update for the purposes of (1).
- (3) An update under (1) must:
  - summarise the progress of the *claim* since the last report (or, in the case of the first report, since the *firm* entered into an agreement with the *customer* in relation to the *claim*); and

		indicate the current state of affairs in relation to the <i>claim</i> ; for example, whether the <i>firm</i> is awaiting an expert's report, whether solicitors have issued a letter before action, or whether the <i>claim</i> has been submitted to the <i>Financial Ombudsman Service</i> but it is yet to make a determination.
6.1.10	G	<div><div>(1) If, during the period to which the report relates, the <i>firm</i> has not sent any notifications to the <i>customer</i> under ■ CMCOB 6.1.5R, the update should indicate why, to the best of the <i>firm's</i> knowledge, there have been no material developments.</div><div>(2) The <i>firm</i> should give updates under ■ CMCOB 6.1.9R until such time as the <i>claim</i> is finally determined or settled, or is withdrawn or discontinued.</div><div>(3) If, for the purposes of notifications under ■ CMCOB 6.1.5R(1) and updates under ■ CMCOB 6.1.9R, the <i>firm</i> has made available an online portal through which <i>customers</i> may receive such notifications and updates, the <i>firm</i> should ensure that it alerts the <i>customer</i> to the notification or update being available via the portal, for example by sending a text message or email (and provided that the <i>customer</i> is content to, and is able to, receive such communications).</div></div>
6.1.11	R	■ CMCOB 6.1.9R does not apply if the <i>customer</i> expressly requests not to receive such updates.
		<b>Providing information to persons other than the customer</b>
6.1.12	R	<div><div>(1) A <i>firm</i> must pass on to a third party any information received from a <i>customer</i> and intended for that third party: promptly, and in any event within ten <i>business days</i>; and in a <i>durable medium</i>.</div><div>(2) Where the information received from the <i>customer</i> is incomplete for the third party's purposes, the <i>firm</i> need not comply with (1) until such time as the <i>customer</i> has supplied the outstanding information, provided that the delay caused by waiting for the outstanding information does not, and could reasonably be expected not to, harm, prejudice or invalidate the <i>claim</i>.</div></div>
		<b>Advising the customer where the claim is not successful</b>
6.1.13	R	<div><div>(1) If a <i>customer's claim</i> is not successful, the <i>firm</i> must advise the <i>customer</i> of the available methods by which the <i>customer</i> may continue to pursue their <i>claim</i>.</div><div>(2) If the <i>claim</i> is of a sort which may be made by the <i>customer</i> to a statutory ombudsman or a statutory compensation scheme, without using the services of the <i>firm</i> and without incurring a fee, the advice must include a statement to the effect that: (a) the <i>customer</i> is not required to use the services of a <i>firm</i> which carries on <i>regulated claims management activity</i> to pursue their <i>claim</i>; and</div></div>

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- (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or the statutory compensation scheme.
  - (1) If the *firm* is aware that the *person* against whom the *claim* was made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (2)), the advice must also include a statement to the effect that it is possible for the *customer* to present the *claim* themselves to that alternative dispute resolution scheme.
  - (4) For the purposes of this *rule*, a *claim* is not successful if it produces an outcome with which the *customer* is not satisfied.
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- (1) A *claim* may progress through several stages. For example, it may start as a complaint made against a company, then proceed to an ombudsman scheme or to the courts. The *firm* must advise the *customer*, after each stage at which the *claim* is not successful, about how they might continue with their *claim*.
  - (2) The *guidance* at ■ CMCOB 3.2.8G also applies in relation to ■ CMCOB 6.1.13R.

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6.2 Fees and fee collection

Explanation of fees and charges

- 6.2.1R
- (1) A *firm* must provide the *customer* with an itemised bill, in a *durable medium*:

(a) if the agreement is terminated under ■ CMCOB 2.1.12R(2)(b), before the *firm* takes any payment (for example, using payment details provided by the *customer*); or

(b) before the *firm* takes or deducts its fees and charges from money received from a third party for onward transmission to the *customer*; or

(c) when the *firm* presents an invoice or request for payment to the *customer*.

(2) The itemised bill must explain:

(a) what *claims management services* the *firm* has provided; and

(b) how the fees and charges have been calculated including, where relevant, by reference to the full amount of any money recovered for the *customer* in respect of damages or compensation, or in settlement of the claim.

(3) A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* without the *customer's* consent.

(4) Where the *FS claims management fee cap* applies to any of the services to which the itemised bill relates, the bill must:

(a) explain whether any of the services to which the bill relates fall outside the scope of the *FS claims management fee cap* ; and

(b) clearly identify the charges for those services.

6.2.2G

*Firms* are reminded that they may be carrying on a *credit-related regulated activity* if they permit *customers* to enter into instalment plans or give them an extended period of time to pay fees and charges later than the date on which they are payable (see ■ PERG 2.7.19AG and ■ 2.7.19GG).

Fee collection

6.2.3R

A *firm* must establish and implement clear, effective and appropriate policies and procedures for:

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## 6.2.4

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- (1) dealing with *customers* who are unable to pay fees and charges to the *firm* when they fall due; and
- (2) the fair and appropriate treatment of *customers* in (1) whom the *firm* understands or reasonably suspects to be vulnerable.

## 6.2.5

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- (1) *Customers* who have mental health difficulties or mental capacity limitations may fall into the category of particularly vulnerable *customers*.
- (2) In developing procedures and policies for dealing with *customers* who may not have the mental capacity to make financial decisions, *firms* may wish to have regard to the principles outlined in the Money Advice Liaison Group (MALG) Guidelines "Good Practice Awareness Guidelines for Consumers with Mental Health Problems and Debt" (March 2015).

[Note: see <http://malg.org.uk/resouces/malg-mental-health-and-debt-guidelines/>]

- (3) A *firm* should suspend the pursuit of the recovery of fees and charges from a *customer* who is unable to pay those fees and charges when they fall due, when:
  - (a) the *firm* has been notified that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges; or
  - (b) the *firm* understands or ought reasonably to be aware that the *customer* might not have the mental capacity to make relevant financial decisions and/or to engage at the time in the process for recovery of unpaid fees and charges.

## 6.2.6

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A *firm* must not take or deduct its fees and charges from money received from a third party for onward transmission to the *customer* unless it has written consent from the *customer* to do so, whether given in the *firm's* agreement with the *customer* or by some other means.

## 6.3 Ceasing regulated claims management activities

### Who and when?

#### 6.3.1

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- (1) ■ CMC OB 6.3.3R to ■ 6.3.6R apply to a *firm*:
  - (a) which carries on any *regulated claims management activities* other than *seeking out, referrals and identification of claims or potential claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on any of those *regulated claims management activities*.
- (2) ■ CMC OB 6.3.7R applies to a *firm*:
  - (a) which carries on *seeking out, referrals and identification of claims or potential claims*; and
  - (b) in respect of which it has been determined that the *firm* is to cease carrying on that *regulated activity*.
- (3) The following provisions in ■ CMC OB 6.3 apply to a *firm* with a *claims management temporary permission* as modified below:
  - (a) the reference in ■ CMC OB 6.3.3R(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*;
  - (b) the reference in ■ CMC OB 6.3.5R to 40 *business days* must be read as 30 *days*; and
  - (c) the reference in ■ CMC OB 6.3.7(1) to 20 *business days* will apply provided that the period does not exceed 30 *days*.

#### 6.3.2

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Circumstances of it being determined that a *firm* is to cease carrying on a *regulated claims management activity* would include:

- (1) the *governing body* of the *firm* deciding to cease carrying on that activity;
- (2) the *firm* becoming insolvent or insolvency proceedings being commenced in respect of the *firm*; and
- (3) the FCA issuing a written notice under the *Act* or *final notice* removing or suspending the relevant *permission*.

Notifying customers.....

6.3.3

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- (1) Within 20 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must, in a *durable medium*:
  - (a) notify each *customer* in relation to whom it carries on those activities that it is to cease carrying on the relevant activities;
  - (b) explain to each *customer* what options are available for the customer to continue with their *claim*; and
  - (c) notify each third party to whom the *claim* has been presented and (if different) each third party against which the *claim* has been made:
    - (i) that the *firm* is to cease carrying on those *regulated claims management activities*; and
    - (ii) of the identity of the *person* who will act for the *customer* in place of the *firm* (where the identity of that *person* is known).
- (2) In explaining to the *customer* what options are available to them to continue with their *claim*, the *firm* must include a statement to the effect of:
  - (a) the statement in (3), if the *claim* is of a sort which may be made by the *customer* to a statutory ombudsman or a statutory compensation scheme without using the services of the *firm* and without incurring a fee; and
  - (b) the statement in (4), if the *firm* is aware that the *person* against whom the *claim* is being or is to be made is a member of, or subject to, an alternative dispute resolution scheme (other than an ombudsman or a scheme of a sort mentioned in (a)).
- (3) The statement in this paragraph is that:
  - (a) the *customer* is not required to use the services of a *firm* which carries on *regulated claims management activity* to pursue their *claim*; and
  - (b) it is possible for the *customer* to present the *claim* themselves for free, either to the *person* against whom they wish to complain or to the statutory ombudsman or a statutory compensation scheme.
- (4) The statement in this paragraph is that it is possible for the *customer* to present the claim themselves to the alternative dispute resolution mechanism mentioned in (3)(b).

6.3.4

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The *guidance* at ■ CMCOB 3.2.8G also applies in respect of ■ CMCOB 6.3.3R(2)(a).

Sending information and documents to customers.....

6.3.5

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Within 40 *business days* of it being determined that the *firm* is to cease carrying on any *regulated claims management activities*, the *firm* must send to each *customer* whose *claim* has not been settled, withdrawn or discontinued all information and documentation the *firm* holds relating to their *claim*.

6.3.6

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**Passing customer details to third parties**

If the *firm* passes the *customer*, or details of the *customer* or of the *claim* to a third party, with a view to that third party carrying on a *regulated claims management activity* in respect of the *claim* or the *customer* (or activity which would constitute such a *regulated activity* but for an exemption or an exclusion), the *firm* must promptly notify the *customer* in a *durable medium*:

- (1) that it has done so; and
- (2) of the identity and contact details of the third party.

6.3.7

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**Ceasing to carry on seeking out, referrals and identification of claims or potential claims**

- (1) This *rule* applies in respect of a *firm* which has indicated to a *customer* that it will:
  - (a) identify a third party to assist the *customer* with their *claim*; and
  - (b) pass the *customer's* details or details relating to the *claim* to the third party, or pass details of the third party to the *customer*,but has not yet done so and will not do so within 20 *business days* of it being determined that the *firm* is to cease carrying on *seeking out, referrals and identification of claims or potential claims*.
- (2) Within the time period referred to in (1), the *firm* must, in respect of each *customer* to whom it has made an indication of the sort described in (1) in a *durable medium*, notify the *customer* that it has not done so and explain why.